

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

IN RE:	)	Bankruptcy No. Case No. 08-35653-KRH
	)	
CIRCUIT CITY STORES, INC., et al.	)	CHAPTER 11
	)	
Debtors.	)	Jointly Administered
	)	
UNITED STATES OF AMERICA,	)	
on behalf of Its agency the U.S. Department	)	
of Commerce, National Telecommunications	)	
Information Administration,	)	Contested Matter
	)	
Movant,	)	
	)	
v.	)	
	)	
CIRCUIT CITY STORES, INC.,	)	
	)	
Respondent.	)	

**DECLARATION OF ANITA L. WALLGREN**

I, Anita L. Wallgren, pursuant to 28 U.S.C. § 1746 declare as follows:

1. I am the Director of the Digital-to-Analog Converter Box Program ("Coupon Program") of the National Telecommunications and Information Administration ("NTIA") of the United States Department of Commerce ("Department"), and the Contracting Officer's Technical Representative ("COTR") for Contract No. DG1335-07-CQ-0054, the contract between the Department and International Business Machines ("IBM"), for services in support of the Coupon Program. I make this declaration based on personal knowledge and on information acquired in the course of my duties.

2. The Coupon Program was created under the Digital Television Transition and Public Safety Act of 2005 ("Act"), Title III of Deficit Reduction Act of 2005, Public Law 109-

171, 120 Stat. 4 (2006). The Act requires television broadcasters to terminate transmission of analog transmissions, and convert exclusively to digital broadcast transmission. The Act, as amended, established a deadline by which the conversion to digital transmission was to be completed. Currently, that date is June 12, 2009. *See* Pub. L. No. 111-4, 123 Stat. 112 (February 11, 2009).

3. In the Act, Congress provided for the Coupon Program to assist consumers in purchasing converter boxes, which would operate to convert digital signals for use with the consumers' current analog-capable television sets not hooked up to cable, satellite, or other pay TV service. The converter boxes would permit consumers who receive television programming by means of the free, over-the-airwaves broadcasts to continue to receive usable television broadcast signals after the conversion of full power television stations exclusively to digital signals.

4. Specifically, Section 3005 of the Act directs NTIA to implement and administer the Coupon Program through which eligible U.S. households may obtain a maximum of two coupons of \$40.00 each to be applied towards the purchase of Coupon-Eligible Converter Boxes ("CECB"). *See* Act, § 3005 (47 U.S.C. § 309 Note). Coupons are used by consumers like gift cards. The cards, however, are restricted to a one-time use and may be used only to purchase CECBs (not televisions or other consumer electronics equipment.) With their coupons, consumers receive a list of CECB brand and model numbers as well as a list of participating retailers. Retailers set the CECB purchase price; consumers shop at their retailer of choice and pay any amount over \$40 by any means permitted by the retailer (e.g., cash, check, debit or credit card.)

5. Retailer participation in the Coupon Program—specifically the requirements with which participating retailers are required to comply—are set forth in the implementing regulations contained in Part 301 (47 C.F.R.) (“Final Rule”), *see* copy attached as Exhibit 1, together with the applicable Retailer Agreement, and any addendums thereto.<sup>1</sup>

6. To help implement certain aspects of the Coupon Program, NTIA contracted with IBM. IBM’s subcontractor, Corporate Lodging Consultants, Inc. (“CLC”), is responsible for administering retailer certification, management and redemptions. Under Section 1.3.3 of IBM’s Performance Work Statement incorporated into the NTIA/IBM contract, all retailers interested in participating in the Coupon Program would be required to execute a standard Retailer Agreement, a true and correct copy of the Draft Retailer Agreement proposed by IBM and CLC to NTIA is attached as Exhibit 2. Every Retailer Agreement obtained by CLC from retailers participating in the Coupon Program was obtained on behalf, and for the benefit of NTIA.

7. Among the services provided by IBM under the contract was the implementation of the Settlement Verification and Reconciliation System (“Settlement System”) in response to NTIA’s requirement. The Settlement System, among other things, reviews and confirms that an initial payment request from a certified retailer under the Coupon Program is valid, requests payment from the federal government to the retailer, and maintains a list of the attempted and confirmed coupon transactions by each retailer, as well as a listing of all issued coupons and their status.

8. Based on information provided by IBM and CLC to NTIA, Circuit City became a participating retailer in the Coupon Program under the terms of the Final Rule, together with its

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<sup>1</sup>The Final Rule also sets forth the basic framework for the Coupon Program and provides guidance for consumers, television converter box manufacturers, and retailers regarding eligibility, responsibilities, and certifications. *See* Exhibit 1 attached.

Retailer Agreement dated December 10, 2007. *See* copy attached to Declaration of Kyle Rogg as Exhibit 3.

9. Under the terms of the Final Rule and the Retailer Agreement, Circuit City acknowledged that: (1) NTIA administers the Coupon Program in accordance with the Final Rule, and that the Final Rule sets forth the terms of retailer certification; (2) Circuit City desired to participate as an approved retailer under the Coupon Program, and entered the Agreement with NTIA's contractor team member, CLC, for that purpose; and (3) the Agreement described the obligations of Circuit City to participate in the Coupon Program. *See* Exhibit 3 attached to Declaration Kyle Rogg.

11. Under the Retailer Agreement, Circuit City agreed to present coupons for redemption using the "Sales Detail Reporting" redemption method (one of six redemption options offered to retailers) using the Visa Network through a "card swipe" that was supported by CLC as Service Provider. *Id.* ¶ 3(2). The redemption information to be provided by Circuit City was to track each serialized coupon by number with a corresponding converter box purchase. *Id.* ¶ 1(4). Reimbursement for a redeemed coupon was made directly by the U.S. Treasury. *Id.*, ¶ 3(4). Circuit City agreed that the Government could audit its converter box sales at any time during the term of the agreement, *id.* ¶ 1(3), that it would perform its duties in accord with the NTIA Final Rule, *id.* ¶¶ 1(8) and 2(6), and that Circuit City would indemnify and hold harmless the Government and its officers, agents, employees and contractors from any liability arising in connection with Circuit City's negligence, wrongful acts or omissions. *Id.* ¶ 4.

12. CLC reported to NTIA that Circuit City had electronically executed a Return Addendum to the Retailer Agreement, which provided that Circuit City "may choose to allow consumers to return Coupon Eligible Converter Boxes." It further provided that if such boxes

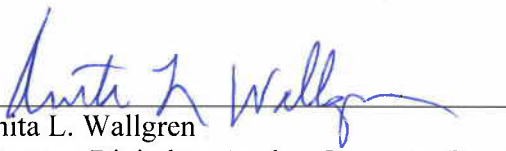
were returned (and not exchanged for another converter box), Circuit City was required to “[r]eport all [such returns] . . . to the Coupon Program.” Circuit City agreed that the amount paid to it under the Coupon Program for such returned boxes—called a “Returned CECB Settlement”—would be “credited against [other] Coupon Program payments” from the government. Circuit City agreed to “[r]eport all Returned CECB Settlements at least monthly using one of the Coupon Program approved reporting methods.” *See* Exhibit 4 attached to the Rogg Declaration, ¶ 2(4). CLC was required under the Addendum to “[f]acilitate credit to the U.S. Treasury of any Returned CECB Settlement.” *Id.*

13. CLC reported to NTIA that from the start of Circuit City’s participation in the Coupon Program and through the date of its petition under Chapter 11 of the Bankruptcy Code on November 10, 2008, Circuit City failed to timely report any Returned CECB Settlement to NTIA. CLC further reported to NTIA that as of March 17, 2009, Circuit City had received coupon reimbursements totaling \$44,162,801.00 from the U.S. Treasury under the terms of the Retailer Agreement for the Coupon Program. As reported by Circuit City through CLC, since the beginning of its participation in the Coupon Program and through its petition date (November 10, 2008), there have been approximately \$287,000.00 in Returned CECB Settlements for which a refund is owed to the U.S. Treasury under the Retailer Agreement as amended by the Returns Addendum. In addition, Circuit City reported through CLC to NTIA Returned CECB Settlements subsequent to its filing its petition in bankruptcy of \$60,879.80 through January 17, 2009, of which a credit of \$13,159.80 has been taken by the U. S. Treasury. Thus, through January 17, 2009, Circuit City has reported a total of \$334,720.00 in refunds due to the United States for Returned CECB Settlements. Consequently, on February 23, 2009, NTIA placed an administrative hold, and from February 24 through March 4, 2009, it

sequestered a total of \$334,720.00 in payments due to Circuit City in post-petition coupon  
reimbursement claims in order to recoup the refunds it is owed by Circuit City for the Returned  
CECB Settlements.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 20<sup>th</sup> day of May, 2009.

  
Anita L. Wallgren  
Director, Digital-to-Analog Converter Box Program  
NTIA, United States Department of Commerce



47 C.F.R. § 301.1

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**Effective: May 16, 2007**

AUTHORITY: Title III of the Deficit Reduction Act of 2005, [Pub.L. No. 109-171, 120 Stat. 4](#), 21 (Feb. 8, 2006) (the “Act”).

Current through March 6, 2009; 74 FR 9949

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Title 47. Telecommunication

☞ [Chapter III](#). National Telecommunications and Information Administration, Department of Commerce

☞ [Part 301](#). Digital-to-Analog Converter Box Coupon Program ([Refs & Annos](#))

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**→ § 301.1 Program Purposes.**

Pursuant to section 3005 of the Act, (The Deficit Reduction Act of 2005), the purpose of the Digital-to-Analog Converter Box Coupon Program is to provide \$40 coupons that can be applied towards the purchase price of eligible digital-to-analog converter boxes. After February 17, 2009, the Federal Communications Commission will require that all full-power television stations in the United States broadcast using digital television technology. Consumers who wish to continue to receive local broadcast television programming over-the-air using analog televisions not connected to cable or satellite service may wish to purchase digital-to-analog converter boxes in order to do so.

47 C. F. R. § 301.1, 47 CFR § 301.1

SOURCE: [72 FR 12116](#), March 15, 2007; [72 FR 18400](#), April 12, 2007, unless otherwise noted.



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▢ [Part 301](#). Digital-to-Analog Converter Box  
Coupon Program ([Refs & Annos](#))

**→ § 301.2 Definitions.**

Act means Title III of the Deficit Reduction Act of 2005,  
[Pub.L. No. 109-171, 120 Stat. 4](#), 21 (Feb. 8, 2006).

Agency means the National Telecommunications and  
Information Administration of the United States  
Department of Commerce or its contractor.

Assisted living facility means a public facility, proprietary  
facility, or facility of a private nonprofit corporation that:  
is licensed by the State and makes available to residents  
supportive services to assist the residents in carrying out  
activities of daily living, such as bathing, dressing, eating,  
getting in and out of bed or chairs, walking, going  
outdoors, using the toilet, laundry, home management,  
preparing meals, shopping for personal items, obtaining  
and taking medication, managing money, using the  
telephone, or performing light or heavy housework, and  
which may make available to residents home health care  
services, such as nursing and therapy; and provides  
separate dwelling units for residents, each of which may

contain a full kitchen and bathroom, and which includes  
common rooms and other facilities appropriate for the  
provision of supportive services to the residents of the  
facility.

Certified Retailer means a seller of Coupon-Eligible  
Converter Boxes directly to consumers that has met the  
requirements for certification and has been identified by  
NTIA as certified to redeem coupons.

Contingent Funds means those funds referenced in Section  
3005 (c)(3) of the Act.

Coupon means a voucher provided by the Agency to  
Eligible Households which only may be used to purchase  
a Coupon-Eligible Converter Box from a Certified  
Retailer.

Coupon-Eligible Converter Box (CECB) means a  
stand-alone device that does not contain features or  
functions except those necessary to enable a consumer to  
convert any channel broadcast in the digital television  
service into a format that the consumer can display on a  
television receiver designed to receive and display signals  
only in the analog television service. CECBs may also  
include remote control devices. CECBs must have the  
features required by, and meet the technical performance  
specifications listed in Technical Appendix 1.

Department means the United States Department of  
Commerce.

Eligible Household means those Households in the United  
States and its territories that make a valid request for a  
coupon pursuant to Rule 301.3 within the time period



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specified by NTIA, but no later than March 31, 2009.

separate from the Nursing Home, Intermediate Care Facility, or the Assisted Living Facility.

FCC means the Federal Communications Commission.

[[73 FR 54333](#), Sept. 19, 2008]

State includes each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

47 C. F. R. § 301.2, 47 CFR § 301.2

Household consists of all persons who currently occupy a house, apartment, mobile home, group of rooms, or single room that is occupied as separate living quarters and has a separate U.S. Postal address. A household does not mean a Post Office Box.

SOURCE: [72 FR 12116](#), March 15, 2007; [72 FR 18400](#), April 12, 2007, unless otherwise noted.

AUTHORITY: Title III of the Deficit Reduction Act of 2005, [Pub.L. No. 109-171](#), [120 Stat. 4](#), 21 (Feb. 8, 2006) (the "Act").

Intermediate care facility means a proprietary facility or facility of a private nonprofit corporation or association licensed by the State for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services.

Current through March 6, 2009; 74 FR 9949

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Nursing Home means a public facility, proprietary facility or facility of a private nonprofit corporation or association, licensed by the State for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services, in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

Nursing Home Resident means an individual who lives on a permanent basis at a Nursing Home, Intermediate Care Facility, or Assisted Living Facility. A Nursing Home Resident does not have a permanent address that is



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**→ § 301.3 Household Eligibility and  
Application Process.**

(c) Requests for coupons must be submitted to the Agency  
no later than March 31, 2009.

(d) Once Contingent Funds are available for the Coupon  
Program, only over-the-air households will be eligible.  
During the period in which Contingent Funds are  
available, households must certify that they do not receive  
cable, satellite, or other pay television service.

(e) If an applicant does not meet the above eligibility  
requirements, the request will be denied.

[[73 FR 54333](#), Sept. 19, 2008]

(a) To apply for and receive a coupon, an Eligible  
Household must:

47 C. F. R. § 301.3, 47 CFR § 301.3

(1) provide the name of the person submitting the  
request

SOURCE: [72 FR 12116](#), March 15, 2007; [72 FR 18400](#),  
April 12, 2007, unless otherwise noted.

(2) A Post Office Box will not be considered a valid  
mailing address unless the applicant supplies  
information to identify the physical location of the  
household, as required.

AUTHORITY: Title III of the Deficit Reduction Act of  
2005, [Pub.L. No. 109-171, 120 Stat. 4](#), 21 (Feb. 8, 2006)  
(the “Act”).

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(3) indicate the number of coupons requested, but no  
more than two coupons.

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(b) As of January 1, 2008, requests for coupons may be  
submitted by mail, telephone or the Internet on forms  
provided by the Agency.



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**→ § 301.4 Coupons.**

(a) The coupon value will be \$40 or the price of the  
CECB, whichever is less.

(b) Each Eligible Household will be limited to a total of  
two coupons.

(c) Two coupons may not be used in combination toward  
the purchase of a single CECB.

(d) Coupons will be sent to Eligible Households via the  
United States Postal Service.

(e) Coupons will expire 90 days after the issuance date.  
Issuance date means the date upon which the coupon is  
placed with the United States Postal Service.

(f) Consumers may not return a CECB to a retailer for a

cash refund for the coupon amount or make an exchange  
for another item unless it is another CECB.

(g) The coupon has no cash value. It shall be illegal to sell,  
duplicate or tamper with the coupon.

47 C. F. R. § 301.4, 47 CFR § 301.4

SOURCE: [72 FR 12116](#), March 15, 2007; [72 FR 18400](#),  
April 12, 2007, unless otherwise noted.

AUTHORITY: Title III of the Deficit Reduction Act of  
2005, [Pub.L. No. 109-171, 120 Stat. 4](#), 21 (Feb. 8, 2006)  
(the “Act”).

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**→ § 301.5 Manufacturers' Technical  
Approval Process.**

(a) Manufacturers wishing to participate in the coupon program must submit a notice of intent to NTIA at least three months prior to submitting test results and sample models of converter boxes. Notices should be sent to DTV Converter Coupon Program, NTIA/OTIA, U.S. Department of Commerce, Room 4809, Washington, DC 20230, Fax Number 202-482-4626 and provide the name, title, address, and phone number of an individual responsible for the manufacturer's submission. The notice shall also include a brief description of the proposed converter box, including permitted as well as required features, and the date which the proposed converter box is expected to be available for testing.

(b) NTIA shall treat the notices of intent received as business confidential and proprietary information and will not release information from the notices of intent to the public unless otherwise required by law.

(c) The manufacturer will supply two production sample converter boxes to NTIA. NTIA will provide the manufacturer with mailing information in a letter of acknowledgment after NTIA receives the notice of intent.

(d) Each model proposed to be a CECB shall meet the performance specification and features set forth in Technical Appendix 1 of this Section. Each model proposed may also include "permitted" features set forth in Technical Appendix 2, but shall not include "disqualifying" features set forth therein.

(e) NTIA may issue other guidance or test-bed conditions and it is the manufacturer's responsibility to conduct tests pursuant to any guidance so provided. A manufacturer shall conduct its own tests or have a qualified independent third party conduct the tests.

(f) Reports of test conditions and test results must be clear and comprehensive so that they can be easily interpreted by NTIA and others reviewing them. The FCC may test converter boxes, if requested by NTIA.

(g) Test results shall be submitted to NTIA along with a certification of the testing supervisor as to their authenticity, completeness and accuracy based on personal knowledge.

(h) NTIA will provide prompt notice to the individual submitting test results whether the model has met technical approval and is or is not a CECB. NTIA will base its decision whether to approve each converter box upon consultation with the FCC.

(i) A list of CECBs, including make and model number,

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will be maintained by NTIA and regularly distributed to participating retailers for use in electronic Point-of-Sale (POS) systems.

(j) It is the responsibility of the manufacturers to resolve any performance or product defect issues with consumers and retailers.

(k) NTIA shall not warrant the performance, suitability, or usefulness of any CECB for any use.

47 C. F. R. § 301.5, 47 CFR § 301.5

SOURCE: [72 FR 12116](#), March 15, 2007; [72 FR 18400](#), April 12, 2007, unless otherwise noted.

AUTHORITY: Title III of the Deficit Reduction Act of 2005, [Pub.L. No. 109-171, 120 Stat. 4](#), 21 (Feb. 8, 2006) (the “Act”).

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**→ § 301.6 Retailer Participation.**

Retailer participation is voluntary. NTIA encourages retailers to participate in the Coupon Program and to cooperate with NTIA and its contractor in the administration of an effective and efficient program resulting in high customer satisfaction with a minimum of waste, fraud and abuse.

(a) Retailer Obligations: Certified Retailers are required to redeem valid coupons toward the purchase of CECBs, and

(1) Must have systems in place that are capable of electronically processing coupons for redemption and payment, tracking each and every transaction, and generating reports that are easily auditable.

(2) Must train employees on the purpose and operation of the Coupon Program. NTIA or its contractor will provide training material.

(3) Will not be responsible for checking consumer or household eligibility but shall report to NTIA suspicious patterns of customer behavior.

(4) Use commercially reasonable methods to order and manage inventory to meet customer demand for CECBs.

(5) Must provide transaction reports based on NTIA's requirements. Reports must be maintained by the retailer for at least one year. Business confidential and proprietary information shall not be disclosed to the public unless otherwise required by law.

(b) Retailer Certification:

(1) Retailers seeking to participate in the Coupon Program must apply for certification by contacting NTIA between June 1, 2007 and March 31, 2008.

(2) Retailers must complete the form provided by the Agency which requires the retailers to self certify that they:

(A) Have been engaged in the consumer electronics retail business for at least one year unless waived for good cause by NTIA. Good cause will be determined upon a showing by the retailer that participation would be in the best interest of the program. NTIA will issue a written determination as to whether a retailer has made a sufficient showing of good cause to waive this requirement;

(B) Have completed a Central Contractor Registration

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(www.ccr.gov);

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(C) Have in place systems or procedures that can be easily audited as well as systems that can provide adequate data to minimize fraud and abuse in retail redemption and government payment for coupons;

SOURCE: [72 FR 12116](#), March 15, 2007; [72 FR 18400](#), April 12, 2007, unless otherwise noted.

(D) Agree to have coupon box sales audited at any time during the term of participation in the coupon program by the U.S. Government or an independent auditor at no expense to the retailer;

AUTHORITY: Title III of the Deficit Reduction Act of 2005, [Pub.L. No. 109-171, 120 Stat. 4](#), 21 (Feb. 8, 2006) (the “Act”).

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(E) Will provide NTIA electronically with redemption information and payment receipts related to coupons used in the purchase of converter boxes, specifically tracking each serialized coupon by number with a corresponding CECB purchase; and

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(F) Agree only to accept coupons for, and receive payment resulting from authorized purchases made for CECBs.

(3) Retailer Certification may be revoked by NTIA if a Certified Retailer fails to comply with these regulations, with the terms of any agreement made between the Certified Retailer and NTIA, or for other actions inconsistent with the Coupon Program.

(4) NTIA will not revoke retailer certification for unintentional non-compliance or error.

(5) Retailers may contact NTIA for late application or dispute resolution for problems such as denial or revocation of certification. Such issues will be resolved on a case-by-case basis.



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(d) A Nursing Home Resident seeking a waiver is entitled to only one coupon.

(e) Coupons for approved applications will be mailed individually to each Nursing Home Resident, addressed and mailed "in care of" to the Nursing Home Resident at the address of the Nursing Home, Intermediate Care Facility, or Assisted Living Facility.

[[73 FR 54333](#), Sept. 19, 2008]

→ **§ 301.7 Waiver of Household Eligibility**

47 C. F. R. § 301.7, 47 CFR § 301.7

(a) A resident of a Nursing Home, Intermediate Care Facility or Assisted Living Facility may apply for a limited waiver of the household eligibility requirement for the Coupon Program and be eligible for one coupon. Anyone may apply for a coupon on behalf of the Resident including the Resident, a family member, an employee of the Nursing Home, Intermediate Care Facility or Assisted Living Facility.

SOURCE: [72 FR 12116](#), March 15, 2007; [72 FR 18400](#), April 12, 2007, unless otherwise noted.

AUTHORITY: Title III of the Deficit Reduction Act of 2005, [Pub.L. No. 109-171, 120 Stat. 4](#), 21 (Feb. 8, 2006) (the "Act").

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(b) The application must be in the name of the Nursing Home Resident and must include the resident's name, the name of the facility and the street address. The Nursing Home Resident must also certify that their television set is over-the-air-reliant or whether they subscribe to satellite, cable or other pay television service.

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(c) Applications will be accepted by mail only on pre-printed form. In the alternative, a letter will be accepted as an application if all of the required information for the waiver is contained therein.





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Program ([Refs & Annos](#))

**→ Technical Appendix 1**

NTIA Coupon-Eligible Converter Box (CECB)

Required Minimum Performance Specifications and Features

**REFERENCE DOCUMENTS**

ATSC A/74, Receiver Performance Guidelines, June 2004

ATSC A/53E, ATSC Digital Television Standard, Revision E  
with Amendments No. 1 and No. 2, September 2006

ATSC A/65C, Program and System Information Protocol for  
Terrestrial Broadcast and Cable (Revision C) With  
Amendment No. 1, May 2006

Recommendation ITU-R BT.500-11, Methodology for the  
subjective assessment of the quality of television pictures

ATSC A/69, PSIP Implementation Guidelines for  
Broadcasters, June 2002

ELIGIBLE CONVERTER BOXES SHALL COMPLY WITH  
THE FOLLOWING MINIMUM PERFORMANCE  
SPECIFICATIONS AND FEATURES:

**1. Decoder**

Equipment shall be capable of receiving and presenting for  
display program material that has been encoded in any and all  
of the video formats contained in Table A3 of ATSC A/53E.  
The image presented for display need not preserve the original  
spatial resolution or frame rate of the transmitted video format.

**2. Output Formats**

Equipment shall support 4:3 center cut-out of 16:9 transmitted  
image, letterbox output of 16:9 letterbox transmitted image,  
and a full or partially zoomed output of unknown transmitted  
image.

**3. PSIP Processing**

Equipment shall process and display ATSC A/65C Program  
and System Information Protocol (PSIP) data to provide the  
user with tuned channel and program information. See ATSC  
A/69 for further guidance.

**4. Tuning Range**

Equipment shall be capable of receiving RF channels 2 through

69 inclusive.

#### 5. RF Input

Equipment shall include a female 75 ohm F Type connector for VHF/UHF antenna input.

observe the video and listen to the audio for at least 20 seconds in order to determine Threshold of Visibility (TOV) and Threshold of Audibility (TOA). Subjective evaluation of TOV should correspond with achievement of transport stream error rate not greater than a BER of  $3 \times 10^{-6}$ . If there is disagreement over TOV performance evaluation, it will be resolved with a measurement of actual BER.

#### 6. RF Output

Equipment shall include a female 75 ohm F Type connector with user-selectable channel 3 or 4 NTSC RF output.

Test conditions are for a single RF channel input with no noise or channel impairment. Refer to ATSC A/74 [Section 4.1](#) for further guidance. (Note the upper limit specified here is different than that in A/74 4.1).

#### 7. Composite Output

Equipment shall include female RCA connectors for stereo left and right audio (white and red) and a female RCA connector for composite video (yellow). Output shall produce video with ITU-R BT.500-11 quality scale of Grade 4 or higher.

#### 9. Phase Noise

Equipment shall achieve a bit error rate in the transport stream of no worse than  $3 \times 10^{-6}$  for a single channel RF input signal with phase noise of -80 dBc/Hz at 20 kHz offset. The input signal level shall be -28 dBm. Subjective video/audio assessment methodologies described above could be used to comply with the bit error rate requirement. Refer to ATSC A/74 [Section 4.3](#) for further guidance.

#### 8. RF Dynamic Range (Sensitivity)

Equipment shall achieve a bit error rate (BER) in the transport stream of no worse than  $3 \times 10^{-6}$  for input RF signal levels directly to the tuner from -83 dBm to -5 dBm over the tuning range. Subjective video/audio assessment methodologies could be used to comply with the bit error rate requirement. [\[FN1\]](#)

#### 10. Co-Channel Rejection

The receiver shall not exceed the thresholds indicated in Table 1 for rejection of co-channel interference at the given desired signal levels. Refer to ATSC A/74 Section 4.4.1 for further guidance.

[\[FN1\]](#) Subjective evaluation methodologies use the human visual and auditory systems as the primary measuring “instrument.” These methods may incorporate viewing active video and audio segments to evaluate the performance as perceived by a human observer. For subjective measurement, the use of an expert viewer is recommended. The viewer shall

Table 1--Co-Channel Rejection Thresholds.

Type of Interference	Co-Channel D/U Ratio (dB)	
	Weak Desired (-68 dBm)	Moderate Desired (-53 dBm)
DTV interference into DTV	+15.5	+15.5
NTSC interference into DTV	+2.5	+2.5

Notes:  
 NTSC split 75% color bars with pluge bars and picture to sound ratio of 7 dB should be used for video source.  
 ATSC high definition moving video should be used for video source.  
 All NTSC values are peak power; all DTV values are average power.

#### 11. First Adjacent Channel Rejection

The receiver shall not exceed the thresholds indicated in Table 2 for rejection of adjacent channel interference at the given desired signal levels. Refer to ATSC A/74 Section 4.4.2 for further guidance.

Table 2--Adjacent Channel Rejection Thresholds

Type of Interference	Adjacent Channel D/U Ratio (dB)		
	Weak Desired (-68 dBm)	Moderate Desired (-53 dBm)	Strong Desired (-28 dBm)
Lower DTV interference into DTV	$\geq -33$	-33	-20

Upper DTV interference into DTV	$\geq -33$	-33	-20
---------------------------------	------------	-----	-----

Lower NTSC interference into DTV	$\geq -40$	-35	-26
----------------------------------	------------	-----	-----

Upper NTSC interference into DTV	$\geq -40$	-35	-26
----------------------------------	------------	-----	-----

Notes:  
NTSC split 75% color bars with pluge bars and picture to sound ratio of 7 dB should be used for video source.  
ATSC high definition moving video should be used for video source.  
All NTSC values are peak power; all DTV values are average power.

12. Taboo Channel Rejection

The receiver shall not exceed the thresholds indicated in Table 3 for rejection of taboo channel interference at the given DTV desired and undesired signal levels. Refer to ATSC A/74 Section 4.4.3 for further guidance.

Table 3--Taboo Channel Rejection Thresholds for DTV Interference into DTV

Channel	Taboo Channel D/U Ratio (dB)
---------	------------------------------

	Weak Desired (-68 dBm)	Moderate Desired (-53 dBm)	Strong Desired (-28 dBm)
N+/-2	>=-44	-40	-20
N+/-3	>=-48	-40	-20
N+/-4	>=-52	-40	-20
N+/-5	>=-56	-42	-20
N+/-6 to N+/-13	>=-57	-45	-20
N +/-14 and N+/-15	>=-46	-45	-20

Notes: ATSC high definition moving video should be used for video source. All DTV values are average power.

### 13. Burst Noise

Equipment shall tolerate a noise burst of at least 165 microseconds duration at a 10 Hz repetition rate without visible errors. The noise burst shall be generated by gating a white noise source with average power -5 dB, measured in the 6 MHz channel under test, referenced to the average power of the DTV signal. The input DTV signal level shall be -28 dBm. Refer to ATSC A/74 Section 4.4.4 for further guidance.

### 14. Field Ensembles

Equipment shall demonstrate that it can successfully demodulate, with two or fewer errors, 30 of the 50 field ensembles available from ATSC in conjunction with ATSC A/74. Error counts are not expected to include inherent errors associated with the start and end or looping of field ensembles for playback.

Refer to ATSC A/74 Section 4.5.2 for further guidance.

#### 15. Single Static Echo

Equipment shall comply with either CRITERIA A or CRITERIA B, below.

##### CRITERIA A:

Equipment shall tolerate a single static echo with the magnitude, relative to a desired DTV signal power of -28 dBm, and delay defined in Table 4.

##### CRITERIA B:

Equipment may demonstrate compliance by tolerating a single static echo with the magnitude, relative to a desired DTV signal power of -28 dBm, and delay defined in Table 5, if the equipment also demonstrates that it can receive 37 of the 50 field ensembles. See Field Ensembles requirement.

##### CRITERIA A:

Table 4--Maximum Single Static Echo Delay

Echo Delay	Desired to Echo Ratio
-50 micros	16 dB
-40 micros	12 dB

-20 micros	6 dB
-10 micros	5 dB
-5 micros	2 dB
0 micros	1 dB
10 micros	2 dB
20 micros	3 dB
40 micros	10 dB
50 micros	16 dB

CRITERIA B:

Table 5--Minimum Single Static Echo Delay	
Echo Delay	Desired to Echo Ratio
-50 micros	16 dB
-40 micros	16 dB
-20 micros	7.5 dB
-10 micros	5 dB
-5 micros	2 dB
0 micros	1 dB

10 micros	2 dB
20 micros	3 dB
40 micros	16 dB

50 micros

16 dB

The RF output must be modulated with associated audio program information; the RCA audio connectors must provide stereo left/right, when broadcast.

#### 16. Channel Display

Equipment must display all channels, including multicast channels, broadcast by a digital television station that can be displayed on an analog TV receiver.

#### 17. Closed Captioning, Emergency Alert System (EAS) and Parental Controls (V-Chip)

Equipment must display (1) EAS message broadcast pursuant to [47 CFR § 11.11](#) of the FCC Rules; (2) parental control information as required by the FCC Rules in [47 CFR § 15.120](#) and incorporate the EIA/CEA-766-A standard; and (3) Close Captioning information as required by the FCC Rules in [47 CFR § 15.122](#) and incorporate the CEA 708/608 standard.

#### 18. Remote Control

A remote control to operate the equipment shall be provided with batteries. Standard codes will be used and provided so the consumer can program an existing remote control to, at a minimum, change channels and turn on and off the converter box and the consumer's existing analog television receiver.

#### 19. Audio Outputs

#### 20. Energy Standards

The equipment shall use no more than two watts of electricity in the "Sleep" state. Sleep state power shall be measured in accordance with industry standard CEA-2013-A. Eligible equipment shall provide the capability to automatically switch from the On state to the Sleep state after a period of time without user input. This capability shall be enabled at the factory as the default setting for the device. The default period of inactivity before the equipment automatically switches to the Sleep state shall be four hours. Eligible equipment may allow the current program to complete before switching to the Sleep state. The default energy related settings shall not be altered during the initial user set-up process and shall persist unless the user chooses at a later date to manually: (a) disable the "automatic switching to Sleep state" capability, or (b) adjust the default time period from 4 hours to some other value.

#### 21. Owner's manual

An owner's manual shall include information regarding the remote control codes used to permit the consumer to program a universal remote control. The owner's manual will include information regarding the availability of the main audio channel and other associated audio channels on the RF and



left/right audio outputs.

22. LED Indicator

The equipment shall contain an LED to indicate when the unit is turned on.

23. RF Cable

The equipment will include at least one RF cable to connect the unit with its associated analog television receiver.

24. Signal Quality Indicator

The equipment will display on the television receiver signal quality indications such as signal strength per ATSC A/74, [Section 4.7](#).

47 C. F. R. Pt. 301, Tech. App. 1, 47 CFR Pt. 301, Tech. App. 1

SOURCE: [72 FR 12116](#), March 15, 2007; [72 FR 18400](#), April 12, 2007, unless otherwise noted.

AUTHORITY: Title III of the Deficit Reduction Act of 2005, [Pub.L. No. 109-171, 120 Stat. 4](#), 21 (Feb. 8, 2006) (the "Act").

Current through March 6, 2009; 74 FR 9949

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Effective: May 16, 2007

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

⌘ [Chapter III](#). National Telecommunications and Information Administration, Department of Commerce

⌘ [Part 301](#). Digital-to-Analog Converter Box Coupon Program [\(Refs & Annos\)](#)

**→ Technical Appendix 2--NTIA Coupon-Eligible Converter Box (CECB): Permitted and Disqualifying Features**

Feature	Permitted Feature	Disqualifying Feature
General Requirements		Any device or capability which provides for more than simply converting a digital over-the-air television signal (ATSC) for display on an analog television receiver (NTSC), including, but not limited to:
		Integrated video display; Video or Audio recording or playback capability such as VCR, DVD, HDDVD, Blue Ray, etc.
Antenna Inputs	Smart Antenna interface connector (CEA 909 Smart Antenna Control Interface standard)	

47 C.F.R. Pt. 301, Tech. App. 2

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The manufacturer may supply a 300 ohm connector or a matching transformer to connect 300 ohm ribbon leads to the required RF antenna input		
Antenna Pass-Through	Equipment may pass through a NTSC analog signal from the antenna to the TV receiver	
By-pass switch to permit NTSC pass-through		
Bundling Antenna and Converter Box	Equipment and Smart Antenna may be sold together at promotional prices	Equipment cannot be sold conditioned on the purchase of a Smart Antenna or other equipment.
Outputs (General)	S-Video	Digital Video Interface (DVI);
		Component video (YPbPr);
		High-Definition Multimedia Interface (HDMI);
		Computer video (VGA);
		USB IEEE-1394 (iLink or Firewire)
		Ethernet (IEEE-802.3)
		Wireless (IEEE0802.11)
Outputs (Audio)	Equipment may process associated audio services described in Section 6.6 of A/54	

RF output may provide monaural audio for the selected audio channel

RF output may provide BTSC stereo for the selected audio channels

Automatic Software Repair/Upgrade Equipment is able to receive and process software pursuant to ATSC A-97

Program Information Equipment may contain software and hardware modifications necessary to display other program information as determined by the manufacturer

Remote Control Manufacturers may include a programmable universal remote control to operate the equipment and other existing video and audio equipment

Remote control may have dedicated keys to provide direct access to closed captioning and descriptive video functions

Other Features Equipment may be operated on battery power as well as external AC/DC power

Manufacturer may supply additional cables, such as a cable with 3 female RCA connectors for composite video (yellow connector) and stereo left and right audio (white and red connectors)

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Equipment may display on the  
television receiver additional signal  
quality information as determined  
by the manufacturer

Energy Standards                      Equipment may comply with  
standards established by the EPA  
Energy Star program or state  
regulatory authorities

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2

SOURCE: [72 FR 12116](#), March 15, 2007; [72 FR 18400](#), April  
12, 2007, unless otherwise noted.

AUTHORITY: Title III of the Deficit Reduction Act of 2005,  
[Pub.L. No. 109-171, 120 Stat. 4](#), 21 (Feb. 8, 2006) (the “Act”).

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RULES and REGULATIONS

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 301

[Docket Number: 090212171-9172-01]

RIN 0660-AA19

Amendments to the Digital-to-Analog Converter Box Program to Implement the DTV  
Delay Act

Thursday, March 12, 2009

AGENCY: National Telecommunications and Information Administration, U.S. Department  
of Commerce.

**\*10686 ACTION:** Final rule.

SUMMARY: On February 11, 2009, President Obama signed into law the DTV Delay Act, which extended the deadline for the digital conversion and the coupon application period for the Digital-to-Analog Converter Box Program (Coupon Program) by four months. [FN1] The DTV Delay Act also authorized the National Telecommunications and Information Administration (NTIA) to issue replacement coupons to households whose coupons have otherwise expired unredeemed. These changes to the Coupon Program were conditioned upon enactment of new budget authority for the Coupon Program, which was recently provided by the American Recovery and Reinvestment Act of 2009. [FN2] [FN1] See DTV Delay Act, [Pub. L. 111-4, 123 Stat. 112](#) (Feb. 11, 2009). [FN2] The American Recovery and Reinvestment Act, [Pub. L. 111-5, 123 Stat. 115](#) (Feb. 17, 2009).

DATES: This final rule becomes effective March 12, 2009.

FOR FURTHER INFORMATION CONTACT: Milton Brown, NTIA (202) 482-1816 or mbrown@ntia.doc.gov.

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SUPPLEMENTARY INFORMATION:

I. Background

The Digital Television Transition and Public Safety Act of 2005 (the Act), among other things, directed the Federal Communications Commission (FCC) to require full-power television stations to cease analog broadcasting and to broadcast solely digital transmissions after February 17, 2009. [FN3] Recognizing that consumers may wish to continue receiving broadcast programming over the air using analog-only televisions not connected to cable or satellite service, section 3005 of the Act also authorized NTIA to establish and implement the Coupon Program. [FN4] Accordingly, NTIA issued final regulations to implement the Coupon Program on March 15, 2007. [FN5]

FN3 See Section 3002 of Title III of the Deficit Reduction Act of 2005, [Pub. L. No. 109-171, 120 Stat. 4](#), 21 (Feb. 8, 2006) (the Act). Section 3002(a) of the Act previously amended Section 309(j)(14)(A) of the Communications Act of 1934 so that analog full-power television licenses will terminate on February 17, 2009. Section 3002(b) of the Act directed the FCC to terminate analog television licenses for full-power stations by February 18, 2009.

FN4 Digital Television Transition and Public Safety Act § 3005, 120 Stat. at 23, 24.

FN5 47 C.F.R. Part 301. The regulations were subsequently amended to waive the "eligible household" application requirement for individuals living in nursing homes, intermediate care facilities and assisted living facilities, and to permit households that utilize post office boxes for residential mail delivery to apply for and receive coupons. [73 Fed. Reg. 54,325 \(Sep. 19, 2008\)](#).

On February 11, 2009, President Obama signed into law the DTV Delay Act. The DTV Delay Act, among other things, extended the date by which the Federal Communications Commission must terminate all licenses for full-power television stations in the analog television services from February 18, 2009 until June 13, 2009. [FN6] Specific to the Coupon Program, subsection 3(a) of the DTV Delay Act amended paragraph (1) of subsection 3005(c) of the Act to **\*10687** extend the date by which households may apply for coupons for digital-to-analog converter boxes from March 31, 2009 until July 31, 2009.

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FN6 See DTV Delay Act at Subsection 2(a).

Subsection 3(b) of the DTV Delay Act amended paragraph (1) of subsection 3005(c) of the Act to add a new subparagraph (D) that authorizes the NTIA Assistant Secretary to issue one replacement coupon per requesting household for each coupon previously issued to such household that expired without being redeemed. Subsection 3(c) of the DTV Delay Act amended paragraph (1) of subsection 3005(c) of the Act to clarify that the Assistant Secretary's obligation to ensure the two-coupon per household maximum was based on the number of coupons the household redeems rather than the number it receives via the United States Postal Service.

Subsection 3(d) of the bill provided that the amendments made by Section 3 of the DTV Delay Act would not take effect until additional budget authority for the Coupon Program was subsequently enacted. On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009, which provided that subsequent budget authority. [FN7]

FN7 The American Recovery and Reinvestment Act of 2009 (providing in pertinent part, "For an amount for 'Digital-to-Analog Converter Box Program', \$650,000,000, for additional coupons and related activities under the program implemented under section 3005 of the Digital Television Transition and Public Safety Act of 2005 . . .").

## II. Discussion

Because of the amendments to the Coupon Program necessitated by the DTV Delay Act, NTIA hereby revises and amends its regulations. Accordingly, 47 C.F.R. Part 301 is amended as discussed below.

### *Application Deadline*

The DTV Delay Act revised Section 3005(c)(1)(A) of the Digital Television Transition and Public Safety Act of 2005 to change the last day that households can request coupons for digital-to-analog converter boxes from March 31, 2009, to July 31, 2009. Accordingly, NTIA amends its regulations at [47 C.F.R. § 301.3\(c\)](#), to reflect this change and to permit households to apply for coupons until July 31, 2009. The change in date will not ensure that funds will be available to fill all coupon requests at that time.



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#### *Reissuance of Coupons*

The DTV Delay Act authorized NTIA to issue replacement coupons to households if those households were previously issued coupons that had expired without being redeemed. [FN8] Because the issue of replacement coupons has not previously been addressed in the Coupon Program regulations, NTIA now adds a new section to provide that a household may request one replacement coupon for each coupon that was issued to such household and that expired without being redeemed. NTIA also requires that a request for a replacement coupon otherwise be made in accordance with the Coupon Program regulations. Thus, the application process for replacement coupons remains the same as that for households requesting coupons for the first time.

FN8 The specific language of Section 3(b) of the DTV Delay Act provided that "[t]he Assistant Secretary may issue to a household, upon request by the household, one replacement coupon for each coupon that was issued to such household and that expired without being redeemed."

#### *United States Postal Service*

The DTV Delay Act also amended Section 3005(c)(1)(A) of the Digital Television Transition and Public Safety Act of 2005 to strike the words "receives, via the United States Postal Service," and inserts the word "redeems" to conform to the new authority for reissuance. Accordingly, NTIA amends [47 C.F.R. § 301.4\(d\)](#) to add at the end thereof "or by other means as determined by the Agency." This change has the effect of providing NTIA with additional flexibility with respect to the manner with which it distributes coupons to U.S. households. Moreover, because the regulations linked the coupon issuance date to the date that the coupon was placed with the United States Postal Service, NTIA must revise its regulations to reflect the change made by the DTV Delay Act. Accordingly, [47 C.F.R. § 301.4\(e\)](#) is amended to add at the end of the second sentence of that provision "or the date upon which the Agency otherwise forwards the coupon to the requesting household." The effect of this change is that the coupon issuance date, for purpose of the 90-day expiration, commences on the date that NTIA places the coupon with the United States Postal service or otherwise forwards it to a requesting household.

#### *Prioritizing Coupon Distribution*

NTIA has found it necessary in the past to place applicants from eligible households on a waiting list until funds from expired coupons become available to distribute more coupons. [FN9] The additional funding provided by the American

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Recovery and Reinvestment Act of 2009 will enable NTIA to liquidate the current waiting list of approximately 4.2 million coupons in two to three weeks after the Coupon Program is able to access such funds. However, if the Coupon Program experiences a high demand, it may be necessary for NTIA to once again place applicants on a waiting list. Thus, NTIA reserves the right to prioritize the distribution of coupons to over-the-air only households in the event that a waiting list becomes necessary, or if any other circumstances arise in which NTIA deems such prioritization appropriate. This decision is based on NTIA's goal of maximizing the benefits of the Coupon Program in the transition to digital television broadcasts. [FN10] Accordingly, NTIA adds a new section to its regulations that permits NTIA to prioritize the distribution of coupons to over-the-air only households if NTIA deems it appropriate.

FN9 See Press Release, Commerce's NTIA Announces New Coupon Applicants Will be Placed on Waiting List Due to High Demand for TV Converter Box Coupons (Jan. 5, 2009) available at [http://www.ntia.doc.gov/press/2009/DTV-- WaitList--090105.pdf](http://www.ntia.doc.gov/press/2009/DTV--WaitList--090105.pdf).

FN10 See [Rules to Implement and Administer a Coupon Program for Digital to Analog Converter Boxes](#), 72 Fed. Reg. 12,097, 12,098 (March 15, 2007).

#### Administrative Procedure Act

As permitted by the good cause exception to the Administrative Procedures Act (APA), [5 U.S.C. § 553\(b\)\(B\)](#), NTIA finds that it is impracticable and contrary to the public interest to provide notice and a public procedure on this final rule. Under the APA, notice and comment is impracticable when the agency cannot both follow [section 553](#) and execute its statutory duties. The limited duration of the statutory extension of the application period provided in the DTV Delay Act requires swift action on the part of NTIA to amend its rules and implement program changes prior to the new application period's expiration. [FN11] **\*10688** To the extent that NTIA provided a public procedure on this final rule, it would not be able to execute the statutory duties required by the DTV Delay Act. The current regulations prohibit households from applying for coupons after March 31, 2009. A normal rulemaking process involving notice and comment to extend the application deadline to July 31, 2009, in conformance with the DTV Delay Act, could extend well beyond March 31, 2009. Likewise, NTIA must amend its existing regulations to issue replacement coupons to households that previously received coupons that expired without being redeemed. To ensure that these households receive coupons prior to the end of analog transmission, regulations must be promulgated expeditiously.

FN11 See also DTV Delay Act, § 4(c). The DTV Delay Act required the Federal

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Communications Commission and the NTIA to expeditiously implement the provisions and amendments made by the DTV Delay Act. Specifically, it provided that such actions should be taken within 30 days of enactment of the DTV Delay Act. Although the DTV Delay Act also provided that the amendments to the authority related to the Coupon Program "shall not take effect until the enactment of additional budget authority after the enactment of this Act," it is nevertheless clear that Congress' intent was rapid implementation of the changes to the Coupon Program upon subsequent enactment of the new budget authority for the program. See DTV Delay Act § 3(d). Courts have found that where Congress has given an agency an extremely short period of time to promulgate a rule, a determination that waiving notice and comment as impracticable is reasonable and not arbitrary. *Philadelphia Citizens for Action v. Schweiker*, 669 F.2d 877 (3rd Cir. 1982).

Moreover, for the reasons above, NTIA finds good cause to waive the 30-day delay in effectiveness required by [5 U.S.C. § 553\(d\)](#) because it is impracticable and contrary to the public interest. The limited duration of the statutory extension of the application period provided in the DTV Delay Act requires swift action on the part of NTIA to amend its rules and implement program changes prior to the new application period's expiration. To the extent that NTIA provided a 30-day delay in effectiveness for this final rule, it would not be able to execute the statutory duties required by the DTV Delay Act. To ensure that these households receive coupons prior to the end of analog transmission, NTIA waives the 30-day delay in effectiveness.

#### [Executive Order 12866](#)

This regulation has been determined to be economically significant for purposes of [Executive Order 12866](#); and therefore has been reviewed by the Office of Management and Budget (OMB). In accordance with [Executive Order 12866](#), an Economic Analysis was completed, outlining the costs and benefits of implementing this rule change. The complete analysis is available from NTIA upon request.

#### Congressional Review Act

It has been determined that this final rule is major under [5 U.S.C. § 801 et seq.](#) NTIA finds good cause under [5 U.S.C. § 808\(2\)](#) that prior notice and public comment are impracticable and contrary to the public interest. To the extent that NTIA provided a 60-day delay in effectiveness pursuant to the Congressional Review Act, it would not be able to execute the statutory duties required by the DTV Delay Act in a timely manner prior to the expiration of its extended authority. Accordingly, this final rule shall take effect upon publication in the Federal Register.

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#### Regulatory Flexibility Act

Because NTIA finds good cause under [5 U.S.C. 553](#) § (b)(B) to waive prior notice and opportunity, the Regulatory Flexibility Act does not apply and therefore does not necessitate the preparation of a regulatory flexibility analysis.

#### [Executive Order 13132](#)

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact.

#### Paperwork Reduction Act

This document does not contain new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). Households are subject to the same information collection requirements that were approved by OMB Control Numbers 0660-0024, 0660-0026, and 0660-0027.

#### List of Subjects in 47 CFR Part 301

Antennas, Broadcasting, Cable television, Communications, Communications equipment, Electronic products, Telecommunications, Television.

For the reasons stated in the preamble, the National Telecommunications and Information Administration amends 47 CFR Part 301 as follows:

#### [PART 301](#)--DIGITAL-TO-ANALOG CONVERTER BOX COUPON PROGRAM

1. The authority citation is revised to read as follows:

Authority: Title III of the Deficit Reduction Act of 2005, [Pub. L. No. 109-171, 120 Stat. 4](#), 21 (Feb. 8, 2005) ([47 U.S.C. § 309](#) note); DTV Delay Act, [Pub. L. No.](#)

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111-4, 123 Stat. 112 (Feb. 11, 2009); American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

**47 CFR § 301.3**

2. Amend § 301.3 by revising paragraphs (c) and (e), and adding paragraphs (f) and (g), to read as follows:

**47 CFR § 301.3**

**§ 301.3** Household eligibility and application process.

\* \* \* \* \*

(c) Requests for coupons must be submitted to the Agency no later than July 31, 2009.

\* \* \* \* \*

(e) A household may request one replacement coupon for each coupon that was issued to such household and that expired without being redeemed. A request for a replacement coupon must otherwise be made in accordance with this section.

(f) If the Agency deems it appropriate, NTIA may prioritize the distribution of coupons to households that have certified that they do not receive cable, satellite or other pay television service.

(g) If an applicant does not meet the above eligibility requirements, the request will be denied.

**47 CFR § 301.4**

3. Amend § 301.4 by revising paragraphs (d) and (e) to read as follows:

**47 CFR § 301.4**

**§ 301.4** Coupons.

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\* \* \* \* \*

(d) Coupons will be sent to Eligible Households via the United States Postal Service or by other means as determined by the Agency.

(e) Coupons expire 90 days after the issuance date. Issuance date means the date upon which the coupon is placed with the United States Postal Service or the date upon which the Agency otherwise forwards the coupon to the requesting household.

\* \* \* \* \*

Dated: March 6, 2009.

Anna M. Gomez,

Acting Assistant Secretary for Communications and Information.

[FR Doc. E9-5361 Filed 3-11-09; 8:45 am]

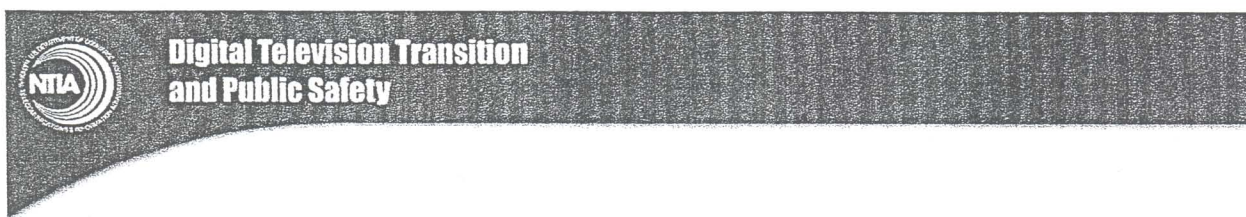
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## ATTACHMENT 2 TO PWS – DRAFT RETAILER AGREEMENT



This Agreement is made on the date hereof by and between the consumer electronics retailer listed below ("Retailer") and Corporate Lodging Consultants, Inc. ("CLC").

### Retailer

Legal Business Name: \_\_\_\_\_  
Doing Business As: \_\_\_\_\_  
Corporate Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Name of Authorized Signatory: \_\_\_\_\_  
Title: \_\_\_\_\_  
Contact Telephone: \_\_\_\_\_  
Contact email: \_\_\_\_\_

WHEREAS, National Telecommunications and Information Administration ("NTIA") is administering the Digital-to-Analog Converter Box Coupon Program (the "Coupon Program"), as authorized in the Digital Television Transition and Public Safety Act of 2005 and in accordance with 47 CFR Part 301 (the "Final Rule");

WHEREAS, the terms of retailer participation are set forth in §301.6 of the Final Rule;

WHEREAS, CLC is providing certain services with respect to the Coupon Program;

WHEREAS, Retailer desires to voluntarily participate in the Coupon Program subject to the terms and conditions of the Final Rule and this Agreement; and

WHEREAS, it is the intention of the parties that this AGREEMENT will describe the obligations of Retailer to participate in the Coupon Program.

NOW, THEREFORE, for good and adequate consideration, the receipt and sufficiency of which being hereby acknowledged, Retailer hereby agrees as follows:

### 1. Retailer Representations, Warranties and Certifications.

Retailer represents, warrants and certifies to the following:

- (1) Retailer has been engaged in the consumer electronics retail business for at least one year and has completed a Central Contractor Registration. (CCR # \_\_\_\_\_)
- (2) Retailer has in place systems or procedures that can be easily audited as well as systems that can provide adequate data to minimize fraud and abuse in retail redemption and government payment for coupons.



- (3) Retailer agrees to have converter box sales audited at any time during the term of participation in the Coupon Program by the U.S. Government or an independent auditor at no expense to Retailer.
- (4) Retailer will provide CLC electronically with redemption information and payment receipts related to coupons used in the purchase of converter boxes, specifically tracking each serialized coupon by number with a corresponding converter box purchase.
- (5) Retailer will only accept coupons and receive payment resulting from purchase made for coupon-eligible converter boxes as defined in the Final Rule.
- (6) The information submitted by Retailer on Attachment A is true and complete.
- (7) This Agreement constitutes the legal, valid, binding, and enforceable agreement, and its execution and performance of this Agreement (i) does not constitute a breach of any agreement with any party, or of any duty arising in law or equity, (ii) does not violate any law, rule or regulation applicable to it, (iii) are within the party's corporate powers, and (iv) has been authorized by all necessary corporate action of Retailer.
- (8) It will perform its obligations under this Agreement in accordance with all applicable laws, rules and regulations.

2. Retailer Obligations.

Retailer agrees to:

- (1) Redeem valid coupons toward the purchase of coupon eligible converter boxes ("CECB"). Retailers redemption process shall ensure that:
  - (a) Two coupons may not be used in combination toward the purchase of a single CECB.
  - (b) Consumers may not return a CECB to Retailer for a cash refund for the coupon amount or make an exchange for another item unless it is another CECB.
  - (c) The coupon has not cash value. It shall be illegal to sell, duplicate or tamper with the Coupon.
  - (d) Customers pay any applicable sales tax in cash.
  - (e) To the extent the purchase price of a CECB is in excess of \$40, Retailer shall collect the difference from the customer in cash or by check or credit card.
  - (f) To the extent that the purchase price of a CECB is less than \$40, Retailer shall not provide any cash or other value to the customer for the residual amount.
- (2) Have systems in place that are capable of electronically processing coupons for redemption and payment, tracking each and every transaction, and generating reports that are easily auditable.
- (3) Report to CLC any suspicious patterns of customer behavior.
- (4) Use commercially reasonable methods to order and manage inventory to meet customer demand for CECBs.
- (5) Provide transaction reports based on CLC's requirements. Reports must be maintained by Retailer for at least one year. Business confidential and proprietary information shall not be disclosed to the public unless otherwise required by law.



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[illegible]

(4) Retailers may contact CLC for dispute resolution for problems such as denial or revocation of certification. Such issues will be resolved on a case-by-case basis at the discretion of CLC.

6. Conflicts.

In the event of a conflict between the terms of this Agreement and the Final Rule, the Final Rule shall govern.

CORPORATE LODGING CONSULTANTS, INC.

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Accepted and Agreed on behalf of Retailer by:

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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